

1 CENTER FOR DISABILITY ACCESS
2 Amanda Seabock, Esq., SBN 289900
3 Prathima Price, Esq., SBN 321378
4 Dennis Price, Esq., SBN 279082
5 Mail: 8033 Linda Vista Road, Suite 200
6 San Diego, CA 92111
7 (858) 375-7385; (888) 422-5191 fax
8 amandas@potterhandy.com

9
10 Attorneys for Plaintiff

11
12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Janix Incorporated**, a California
21 Corporation

22 Defendant.

23
24 **Case No.**

25 **Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

26 Plaintiff Scott Johnson complains of Janix Incorporated, a California
27 Corporation; and alleges as follows:

28
29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
32 level C-5 quadriplegic. He cannot walk and also has significant manual
33 dexterity impairments. He uses a wheelchair for mobility and has a specially
34 equipped van.

35 2. Defendant Janix Incorporated owned the real property located at or
36 about 621 Blossom Hill Rd, San Jose, California, between June 2019 and July
37 2020.

1 3. Defendant Janix Incorporated owns the real property located at or about
2 621 Blossom Hill Rd, San Jose, California, currently.

3 4. Defendant Janix Incorporated owned Gas N' Go located at or about 621
4 Blossom Hill Rd, San Jose, California, between June 2019 and July 2020.

5 5. Defendant Janix Incorporated owns Gas N' Go ("Gas Station") located
6 at or about 621 Blossom Hill Rd, San Jose, California, currently.

7 6. Plaintiff does not know the true names of Defendants, their business
8 capacities, their ownership connection to the property and business, or their
9 relative responsibilities in causing the access violations herein complained of,
10 and alleges a joint venture and common enterprise by all such Defendants.
11 Plaintiff is informed and believes that each of the Defendants herein is
12 responsible in some capacity for the events herein alleged, or is a necessary
13 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
14 the true names, capacities, connections, and responsibilities of the Defendants
15 are ascertained.

16

17 **JURISDICTION & VENUE:**

18 7. The Court has subject matter jurisdiction over the action pursuant to 28
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 8. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California's Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

1 **FACTUAL ALLEGATIONS:**

2 10. Plaintiff went to the Gas Station in June 2019, July 2019 (twice) and July
3 2020 with the intention to avail himself of its goods or services motivated in
4 part to determine if the defendants comply with the disability access laws.

5 11. The Gas Station is a facility open to the public, a place of public
6 accommodation, and a business establishment.

7 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
8 to provide wheelchair accessible parking in conformance with the ADA
9 Standards as it relates to wheelchair users like the plaintiff.

10 13. The Gas Station provides parking to its customers but fails to provide
11 wheelchair accessible parking.

12 14. A few problems encountered by the plaintiff is that the access aisle, if it
13 could be called that, is in the form of a triangle. There is no "NO PARKING"
14 warning, no striping and no International Symbol of Accessibility logo.
15 Moreover, there were slopes in the parking space reserved for persons with
16 disabilities that exceeded 2.1%.

17 15. Plaintiff believes that there are other features of the parking that likely
18 fail to comply with the ADA Standards and seeks to have fully compliant
19 parking available for wheelchair users.

20 16. On information and belief the defendants currently fail to provide
21 wheelchair accessible parking.

22 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
23 to provide wheelchair accessible paths of travel in conformance with the ADA
24 Standards as it relates to wheelchair users like the plaintiff.

25 18. The Gas Station provides paths of travel to its customers but fails to
26 provide wheelchair accessible paths of travel.

27 19. The problem encountered by the plaintiff is that the walkway surface
28 leading to the Gas Station store had a one-inch gap in the cement.

1 20. Plaintiff believes that there are other features of the paths of travel that
2 likely fail to comply with the ADA Standards and seeks to have fully compliant
3 paths of travel available for wheelchair users.

4 21. On information and belief the defendants currently fail to provide
5 wheelchair accessible paths of travel.

6 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to
7 provide wheelchair accessible restrooms in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 23. The Gas Station provides restrooms to its customers but fails to provide
10 wheelchair accessible restrooms.

11 24. A few problems encountered by the plaintiff is that the restroom door
12 hardware had a traditional round knob handle and the restroom sink was too
13 high. Additionally, there were no toilet grab bars and the plumbing underneath
14 the sink was not wrapped.

15 25. Plaintiff believes that there are other features of the restrooms that
16 likely fail to comply with the ADA Standards and seeks to have fully compliant
17 restrooms available for wheelchair users.

18 26. On information and belief the defendants currently fail to provide
19 wheelchair accessible restrooms.

20 27. These barriers relate to and impact the plaintiff's disability. Plaintiff
21 personally encountered these barriers.

22 28. As a wheelchair user, the plaintiff benefits from and is entitled to use
23 wheelchair accessible facilities. By failing to provide accessible facilities, the
24 defendants denied the plaintiff full and equal access.

25 29. The failure to provide accessible facilities created difficulty and
26 discomfort for the Plaintiff.

27 30. The defendants have failed to maintain in working and useable
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 31. The barriers identified above are easily removed without much
 3 difficulty or expense. They are the types of barriers identified by the
 4 Department of Justice as presumably readily achievable to remove and, in fact,
 5 these barriers are readily achievable to remove. Moreover, there are numerous
 6 alternative accommodations that could be made to provide a greater level of
 7 access if complete removal were not achievable.

8 32. Plaintiff will return to the Gas Station to avail himself of its goods or
 9 services and to determine compliance with the disability access laws once it is
 10 represented to him that the Gas Station and its facilities are accessible.
 11 Plaintiff is currently deterred from doing so because of his knowledge of the
 12 existing barriers and his uncertainty about the existence of yet other barriers
 13 on the site. If the barriers are not removed, the plaintiff will face unlawful and
 14 discriminatory barriers again.

15 33. Given the obvious and blatant nature of the barriers and violations
 16 alleged herein, the plaintiff alleges, on information and belief, that there are
 17 other violations and barriers on the site that relate to his disability. Plaintiff will
 18 amend the complaint, to provide proper notice regarding the scope of this
 19 lawsuit, once he conducts a site inspection. However, please be on notice that
 20 the plaintiff seeks to have all barriers related to his disability remedied. See
 21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 22 encounters one barrier at a site, he can sue to have all barriers that relate to his
 23 disability removed regardless of whether he personally encountered them).

24

**25 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 26 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all
 27 Defendants.) (42 U.S.C. section 12101, et seq.)**

28 34. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 35. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADA Standards.
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to the
21 maximum extent feasible, the path of travel to the altered area and
22 the bathrooms, telephones, and drinking fountains serving the
23 altered area, are readily accessible to and usable by individuals
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 36. When a business provides parking for its customers, it must provide
26 accessible parking.

27 37. Here, accessible parking has not been provided in conformance with the
28 ADA Standards.

1 38. When a business provides paths of travel, it must provide accessible
2 paths of travel.

3 39. Here, accessible paths of travel have not been provided in conformance
4 with the ADA Standards.

5 40. When a business provides facilities such as restrooms, it must provide
6 accessible restrooms.

7 41. Here, accessible restrooms have not been provided in conformance with
8 the ADA Standards.

9 42. The Safe Harbor provisions of the 2010 Standards are not applicable
10 here because the conditions challenged in this lawsuit do not comply with the
11 1991 Standards.

12 43. A public accommodation must maintain in operable working condition
13 those features of its facilities and equipment that are required to be readily
14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15 44. Here, the failure to ensure that the accessible facilities were available
16 and ready to be used by the plaintiff is a violation of the law.

17

18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
19 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
20 Code § 51-53.)**

21 45. Plaintiff repleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
24 that persons with disabilities are entitled to full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishment of
26 every kind whatsoever within the jurisdiction of the State of California. Cal.
27 Civ. Code § 51(b).

28 46. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 47. Defendants' acts and omissions, as herein alleged, have violated the
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
4 rights to full and equal use of the accommodations, advantages, facilities,
5 privileges, or services offered.

6 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
7 discomfort or embarrassment for the plaintiff, the defendants are also each
8 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
9 (c).)

10 49. Although the plaintiff encountered frustration and difficulty by facing
11 discriminatory barriers, even manifesting itself with minor and fleeting
12 physical symptoms, the plaintiff does not value this very modest physical
13 personal injury greater than the amount of the statutory damages.

14

15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide
17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
20 plaintiff is not invoking section 55 of the California Civil Code and is not
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act, which provides for actual
23 damages and a statutory minimum of \$4,000 for each offense.

24 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
25 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: November 11, 2020

CENTER FOR DISABILITY ACCESS

2 By:



3
4 _____
5 Amanda Seabock, Esq.
6 Attorney for plaintiff
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28